

Bill 23, More Homes Built Faster Act, 2022

Written Submission to the Standing
Committee on Heritage, Infrastructure and
Cultural Policy

Ontario Historical Society
Rob Levery, Executive Director



ONTARIO HISTORICAL SOCIETY

Since 1888



The Ontario Historical Society (OHS) was founded in 1888 by eight local historical societies, and is a provincial non-government, non-partisan, not-for-profit corporation and registered charity with a mandate to preserve and promote Ontario's history. In 1899, the Legislative Assembly of Ontario granted the OHS the unique legal authority, with related responsibilities, to incorporate historical organizations in the Province of Ontario through affiliation with the OHS.

The Society's membership includes individuals and families, life members, and over 500 affiliated societies, organizations, and institutions across Ontario. With 95% of its members located outside of the City of Toronto, the OHS is a provincial, educational organization with a network of community volunteers living and working in all regions of Ontario. Since 1888, the OHS has been granted vice-regal patronage by all 29 Lieutenant-Governors of Ontario. One of our most recent member organizations is the Ontario Association of Former Parliamentarians.



The historic John McKenzie House, provincial headquarters of the Ontario Historical Society, in Willowdale, North York.

The OHS provincial headquarters is located in Willowdale, North York, at a complex of historic buildings: the John McKenzie House (built 1913), Milk House (1907), Stable (1912), and Coach House (1918). In 1992, the OHS successfully fought to stop the demolition of all these buildings, and subsequently restored and had the property designated under the *Ontario Heritage Act*. In 2013 the OHS completed negotiations for a heritage conservation easement on the John McKenzie House site and surrounding property, to be held between the City of Toronto and the Ontario Heritage Trust.

Economic Context

Since the financial crisis of 2008, there has been an unprecedented downloading and divestment of heritage buildings and properties by all levels of government and their agencies (eg. conservation authorities), and private institutions such as churches. These divestments include lighthouses, train stations, schoolhouses, logging mills, churches, cemeteries, archives, museums, natural heritage landscapes, etc. These assets are then downloaded onto volunteer historical organizations incorporated by the OHS. This trend of divestment has been exacerbated by the 2020-2022 pandemic (see Appendix A: OHS Incorporations March 2020 – November 2022).

Where some might see these heritage properties as liabilities, the OHS and its membership see them as invaluable financial and cultural assets which enhance local tourism potential and economic development. These volunteer, not-for-profit corporations are now struggling with the enormous financial responsibilities associated with protecting our heritage properties. These costs include insurance, long-term capital expenditures for restoration, annual maintenance, and repairs. A few historical organizations that have assumed ownership or long-term lease agreements in order to restore and safeguard heritage properties for the *public benefit* are also responsible for property taxes.

Economic Importance of Heritage Designation

Preservation and promotion of local history and heritage is essential for economic development, tourism, and the health of viable communities in Ontario.

Designation under the *Ontario Heritage Act* is an important economic tool for our not-for-profit membership, empowering them to raise the necessary capital funds to restore and maintain the heritage assets in their communities. Designation of these heritage assets also helps our volunteer-run organizations to obtain and maintain charitable tax



OHS member organization, Glengarry Fencibles Trust, incorporated in 2010, owns and operates The Bishop's House National Historic Site in the Township of South Glengarry. Designated under the *Ontario Heritage Act* in 2011.

status with Revenue Canada, which is critical for fundraising. Designations for heritage buildings can greatly increase the public profile and visibility of our member organizations, helping them to raise money from the public and private sectors. Given the financial implications and economic demand placed on our organizations, it is essential that the existing tools in our heritage toolkit, like designation, are **strengthened**, not weakened.

The Value of Cemeteries to the Peoples of Ontario

Ontario's Cemeteries are unique repositories of human history and the resting places of human remains and associated artifacts like grave markers, tombstones, and monuments. They are also crucially important elements of our collective heritage, a priceless historical record of the past, and witnesses to the continuity of life in Ontario. Many of Ontario's Cemeteries contain significant ecological features which are invaluable to the natural heritage of Ontario. The OHS maintains that the following four principles are fundamental entitlements for all the peoples of Ontario:

- the sanctity of the deceased is paramount to all other concerns;
- the deceased have a right to rest in peace in the tradition and custom of their religion;
- common human dignity must be respected;
- the living must be responsible for the care of the deceased;

It is in the *public interest* that Ontario's cemeteries be protected, preserved, and maintained in their original locations.



Bethel Union Pioneer Cemetery, in Clearview Township, Simcoe County, was restored and is maintained by OHS member, SilverShoe Historical Society, incorporated in 2007. This site is an example of the ecological importance of Ontario's cemeteries to our natural and cultural landscape. Designated under the *Ontario Heritage Act* in 2016.



Old Durham Road Black Pioneer Cemetery, located in Priceville, Grey County, is the site of the area's original black settlers dating from the 1830s-1880s. The cemetery lay hidden for decades under a farmer's potato field. Designated under the *Ontario Heritage Act* in 2016.

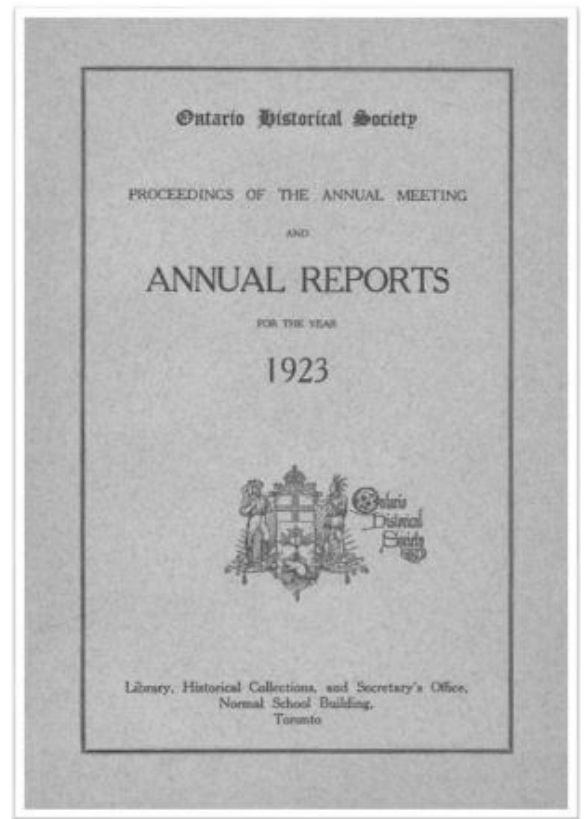
Cemetery Preservation

The OHS first became concerned about the protection and maintenance of pioneer cemeteries in Ontario early in the 20th century, when it became apparent that many of them had fallen into a dilapidated state. The Society first urged its many local member societies to pressure local authorities and arouse public interest and concern about their care. When efforts for local reform failed, the OHS lobbied Queen's Park for legislation to protect cemeteries and finally, in 1927, a Cemetery Act was introduced. That first Act needed strengthening and again, after persistent lobbying by the OHS, the Act was improved, and by 1932 action had been taken in over half of the counties in Ontario to preserve its historic cemeteries and burial sites.

Under regulations of the current Funeral, Burial and Cremation Services Act, 2002, the OHS must be given notice if a cemetery owner or operator intends to close (relocate) a cemetery. The OHS then has the right to make a submission to the registrar, on whether closure is in the public interest, and if the OHS disagrees with the registrar, we have the right to appeal to a tribunal.

In 1995 the OHS appealed the first Provincial Order that it was in the public interest to dig up and move the Clendennen Cemetery in Markham for real estate development. The Provincial Appeal Tribunal took place from November 27, 1995 to July 30, 1997. It was the first time such a case had ever been heard in the Province of Ontario.

During these lengthy Appeal Hearings, two critical issues emerged: First, the applicants for cemetery closure argued that there were no important, prominent people buried in the Clendennen Cemetery. On behalf of the OHS membership and the public interest, the Society argued that everyone's history in Ontario is important and must be defended and preserved.



"Recently I have been travelling through different sections of the Province, and it has made my heart ache to see the dilapidated condition of these places. It is shocking to see the fences broken down, many of the monuments out of plumb, tombstones lying in ruins, and in some instances cattle grazing in those sacred spots. Surely such a thing is a disgrace to the people of this fair Province, and ought to be remedied at once. [...] It appears to me that something should be done, a movement set on foot for the beautifying and care of such cemeteries."

-D.I. Ellison, OHS Annual Report 1923

Secondly, the Province, the Town of Markham and the developer vigorously opposed full participation in the hearing by the Clendennen descendants. The OHS argued that at a public hearing on the public interest it was in the public interest to hear



Clendennen Cemetery, located in the City of Markham. Designated under the *Ontario Heritage Act* in 2004.

testimony from family members. After a lengthy adjournment, The Tribunal ruled that Harold Clendennen, a dairy farmer from Hampton, could testify as a witness. In a memorable moment Harold turned to the three Hearing Officers and said, “My family is against relocating it...the cemetery was there first....once a cemetery, always a cemetery.”

It took 19 months for the Tribunal’s three Hearing Officers to write and release their decision on the public interest. The Tribunal ruled in favour of the OHS in April 1999: “The Tribunal has concluded that the procedure followed by the Registrar, Ontario Cemeteries Act, was not correct... and that closing (moving) the Clendennen Cemetery was not in the public interest.” The OHS had to privately raise over \$100,000 for the appeal opposing the Province of Ontario, the Town of Markham, and the real estate developer. The OHS subsequently established a Cemetery Defence Fund which is supported annually by charitable donations and the investment income from the Estate of Dr. Jean Burnet Cemetery Trust Fund.

In 2006, the OHS first became aware of the Cooley-Hatt Cemetery in Ancaster, within the City of Hamilton. Despite the cemetery’s appearance in many official municipal documents, the Province declared it an “unapproved” cemetery and allowed the land to be purchased for real-estate development. In light of this risk, the OHS worked with Jim Brownell, former MPP

for Stormont-Dundas-South Glengarry, to craft the private members bill, Bill 149, Inactive Cemeteries Protection Act, 2009, that sought to extend protection from development to all inactive cemeteries in Ontario, and which received full party support at the [second reading on March 12, 2009](#) (see Appendix B: [Bill 149, Inactive Cemeteries Protection Act, 2009](#)). Regrettably, the Legislative Assembly of Ontario was prorogued before Bill 149 could be enacted.

Unregistered Cemeteries

On June 2, 2011, in a meeting with Hon. John Gerretsen, the then-Minister of Consumer Services, the OHS officially presented the Government of Ontario with a database of unregistered or unlicensed cemeteries. The OHS receives no notification and holds no right of appeal with regard to unregistered historic cemeteries that owners seek to close and relocate for private interests.



Street-Barnes Cemetery, in North Cayuga Township, Haldimand County, is an unregistered/unlicensed cemetery. The Street-Barnes Cemetery is the burial site of early Black settlers, many of whom who arrived in Canada via the Underground Railroad, including a niece of Harriet Tubman, Caroline Barnes (1863-1931).



Holy Blossom Cemetery on Pape Avenue in Toronto is an unregistered/unlicensed cemetery. The Holy Blossom Cemetery is the first Jewish Cemetery in the City of Toronto. It was closed to new burials in the 1930s and replaced by the Holy Blossom Memorial Park in Scarborough.

It is almost impossible in these cases for the OHS to intervene effectively to defend the public interest. The Province of Ontario subsequently requested that the OHS positively verify the existence and exact location of these known cemeteries in order to register/license them.

The OHS, with a membership from all cultures and religions, believes it is in the public interest that all cemeteries be afforded the same legal status and be treated equally. The OHS's volunteer Unregistered Cemetery committee has honoured its public commitments on this important principle and have worked tirelessly to complete this historic initiative over the last eleven years, documenting the approximately 1,500 unregistered cemeteries across Ontario.

OHS research has shown that all peoples are represented in Ontario's unregistered cemeteries, including First Nations burials, Black cemeteries, and Jewish Cemeteries. Unregistered cemeteries often represent those whose history has been neglected, ignored, forgotten, and not considered important. OHS believes that the protection of Ontario's unregistered cemeteries is also critically important to our ecological and cultural heritage ([see this 2009 segment produced by TVO](#)).

As part of our presentation, we are submitting to the Standing Committee on Heritage, Infrastructure and Cultural Policy our completed list of Unregistered Cemeteries (see Appendix C: [Ontario's Unregistered Cemeteries List](#)).



Pictured in July, 2015 with OHS Executive Director Rob Levery is Dr. Bette M. Stephenson who represented the riding of York Mills in the Legislative Assembly of Ontario between 1975 and 1987. Dr. Stephenson served as Deputy Premier, Treasurer, Chair of the Management Board of Cabinet, Minister of Education, Minister of Colleges and Universities, and Minister of Labour. Dr. Stephenson told Rob that she “wanted to come and see the John McKenzie House again, as I came here many times as a young child...it is still beautiful...it is so important your organization saved this, as everything else in the area has been destroyed...even my historic home just up the street was demolished.”

At the end of her visit, Dr. Stephenson confided to Rob that she now had one regret in her political career, “we in cabinet did not do enough to save the Province's history and heritage. It was a big mistake...it wasn't a priority and no government since has made it a priority.”

In Closing

The OHS does not oppose the building of affordable homes for Ontarians.

However, the OHS believes those homes should not be built on the graves of our ancestors.

To protect all cemeteries and burial sites, the OHS asks this committee to vote, recommending **that the Government of Ontario register/license all unregistered cemeteries in the Province of Ontario.**

Additionally, the OHS asks this committee to vote, recommending that the Government of Ontario **designate all cemeteries in the Province of Ontario under the *Ontario Heritage Act* as properties of cultural heritage value in recognition of their sacred and historical significance to all the peoples of Ontario.**

- Rob Leverty,
Executive Director, Ontario Historical Society

Appendices

Appendix A: OHS Incorporations March 2020 – November 2022

Appendix B: *Bill 149, Inactive Cemeteries Protection Act, 2009*

Appendix C: Ontario's Unregistered Cemeteries List



*An Act to incorporate the
Ontario Historical Society,
Assented to 1st April 1899*

...is an Act of the Ontario Legislature that authorizes the Ontario Historical Society to incorporate an affiliated society dedicated to preserving and promoting Ontario's history.

Since the start of the pandemic in March 2020, the OHS has incorporated sixteen not-for-profit historical organizations from regions across Ontario. The Society is proud to work with the following affiliated societies:

INCORPORATED MARCH 11, 2020

- ~Middleport Heritage Society
- ~ Friends of Grand Trunk Railway 1008
- ~ East Luther Grand Valley Historical Society

INCORPORATED JUNE 5, 2020

- ~Ancaster Village Heritage Community

INCORPORATED NOVEMBER 20, 2020

- ~Leaside Heritage Preservation Society
- ~Blue Mountains Historical Society

INCORPORATED JANUARY 29, 2021

- ~Friends of the Mindemoya Old School

INCORPORATED MARCH 12, 2021

- ~Heritage Colchester
- ~Friends of Century Manor
- ~Friends of the Old Stone Mill House

INCORPORATED MARCH 30, 2021

- ~Grey County Black Heritage Society

INCORPORATED APRIL 9, 2021

- ~Friends of Springfield House Complex

INCORPORATED MAY 6, 2021

- ~Flamborough Museum

INCORPORATED MAY 5, 2022

- ~Lanark County Arts and Heritage

INCORPORATED JUNE 14, 2022

- ~Elliot Lake Historical Society

INCORPORATED NOVEMBER 4, 2022

- ~Schumacher Historical Society



1ST SESSION, 39TH LEGISLATURE, ONTARIO
58 ELIZABETH II, 2009

1^{re} SESSION, 39^e LÉGISLATURE, ONTARIO
58 ELIZABETH II, 2009

Bill 149

**An Act to protect
Ontario's inactive cemeteries**

Mr. Brownell

Private Member's Bill

1st Reading February 19, 2009
2nd Reading
3rd Reading
Royal Assent

Projet de loi 149

**Loi visant à protéger
les cimetières inactifs de l'Ontario**

M. Brownell

Projet de loi de député

1^{re} lecture 19 février 2009
2^e lecture
3^e lecture
Sanction royale



EXPLANATORY NOTE

The Bill prohibits the relocation of inactive cemeteries despite anything to the contrary in another Act or regulation dealing with cemeteries.

NOTE EXPLICATIVE

Le projet de loi interdit le déplacement de cimetières inactifs malgré toute disposition contraire d'une autre loi ou d'un autre règlement portant sur les cimetières.

An Act to protect Ontario's inactive cemeteries

Loi visant à protéger les cimetières inactifs de l'Ontario

Preamble

Ontario's cemeteries are unique repositories of human history and the resting places of human remains and associated artifacts like grave markers, tombstones and monuments. They are important elements of our collective heritage, a priceless authentic historical record of the past and witnesses to the continuity of life in Ontario. Many of Ontario's cemeteries also contain significant ecological features invaluable to the natural heritage of Ontario.

The following principles are basic to all the peoples of Ontario:

1. The sanctity of the deceased is of paramount concern.
2. The deceased have a right to rest in peace in the tradition and custom of their religion or beliefs at the burial site of their choosing.
3. Common human dignity must be respected.
4. The living must be responsible for the care of the deceased.
5. The cultural heritage to which burial sites bear witness must be maintained to ensure the historical record for future generations.

Ontario's rich heritage is at risk due to a lack of action for its preservation. Failure to safeguard one of our last remaining authentic cultural heritage resources, Ontario's inactive cemeteries, would be disastrous for the continuity of the historical record and our collective culture in this province. It is in the public interest that they be protected, preserved and maintained in their original locations.

Therefore, Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

Definitions

1. In this Act,

“aboriginal peoples” includes the Indian, Inuit and Métis peoples of Canada; (“autochtone”)

“cemetery” means land set aside for the burial of human

Préambule

Les cimetières de l'Ontario constituent d' uniques recueils de l'histoire humaine et sont le lieu de repos de restes humains, renfermant des artefacts associés à ces lieux comme les repères de tombes, les pierres tombales et les monuments. Ils constituent d' importants éléments de notre patrimoine collectif, sont un précieux et authentique dossier historique faisant écho au passé et sont témoins de la pérennité de la vie en Ontario. Bon nombre des cimetières de l'Ontario comportent également d' importantes caractéristiques écologiques dont la valeur est inestimable en ce qui concerne le patrimoine naturel de l'Ontario.

Les Ontariens et Ontariennes s'entendent sur les principes fondamentaux suivants :

1. Le caractère sacré des dépouilles mortelles revêt une importance primordiale.
2. Les défunts ont le droit de reposer en paix dans le lieu de sépulture de leur choix, selon les traditions et les coutumes véhiculées par leur religion ou leurs croyances.
3. La dignité humaine doit être respectée.
4. Il incombe aux vivants de prendre soin des défunts.
5. Le patrimoine culturel dont témoignent les lieux de sépulture doit être conservé afin de garantir aux générations futures un dossier historique.

Le riche patrimoine de l'Ontario est en danger en raison de l'absence de mesures visant à en assurer la conservation. Il serait désastreux pour la continuité du dossier historique et de notre culture collective dans notre province de ne pas sauvegarder les cimetières inactifs de l'Ontario, une de nos dernières richesses culturelles authentiques. Il est dans l'intérêt public de les protéger, de les conserver et de les entretenir dans leur emplacement original.

Pour ces motifs, Sa Majesté, sur l'avis et avec le consentement de l'Assemblée législative de la province de l'Ontario, édicte :

Définitions

1. Les définitions qui suivent s'appliquent à la présente loi.

«autochtone» S'entend notamment des peuples indiens, inuit et métis du Canada. («aboriginal peoples»)

«cimetière» S'entend d'un bien-fonds qui est réservé à

remains and includes a mausoleum, columbarium or other structure intended for the interment of human remains, with or without government authorization or recognition; («cimetière»)

“human remains” means a dead human body or the remains of a cremated human body; («restes humains»)

“inactive cemetery” means a cemetery that,

- (a) is no longer used for the burial of human remains or no longer accepts human remains for burial,
- (b) continues to be used for the burial of human remains but the number of burials per year is less than five,
- (c) consists of land set aside for the burial of human remains of members of a family or interrelated families,
- (d) is an unapproved aboriginal peoples cemetery, or
- (e) is or was a cemetery although it does not have markers indicating that fact. («cimetière inactif»)

Prohibition on relocation

- 2.** No person shall relocate an inactive cemetery.

Conflict

3. This Act prevails over any other Act or regulation that permits the relocation of an inactive cemetery or provides a process by which an inactive cemetery may be relocated.

Commencement

4. This Act comes into force on a day to be named by proclamation of the Lieutenant Governor.

Short title

5. The short title of this Act is the *Inactive Cemeteries Protection Act, 2009*.

l’inhumation de restes humains et en outre, d’un mausolée, d’un columbarium ou d’une autre construction destinée à l’inhumation de restes humains, et ce avec ou sans l’autorisation ou la reconnaissance du gouvernement. («cemetery»)

«cimetière inactif» S’entend d’un cimetière, selon le cas :

- a) qui ne sert plus à l’inhumation de restes humains ou qui n’accepte plus de restes humains pour inhumation;
- b) qui sert toujours à l’inhumation de restes humains, le nombre d’inhumations étant toutefois inférieur à cinq par année;
- c) qui est un bien-fonds réservé à l’inhumation de restes humains des membres d’une famille ou de familles apparentées;
- d) qui est un cimetière autochtone non approuvé;
- e) qui est ou était un cimetière même s’il ne contient pas de repères témoins. («inactive cemetery»)

«restes humains» Le corps d’un être humain décédé ou les restes d’un corps incinéré. («human remains»)

Déplacement interdit

- 2.** Nul ne doit déplacer un cimetière inactif.

Incompatibilité

3. La présente loi l’emporte sur toute autre loi ou tout autre règlement qui autorise le déplacement d’un cimetière inactif ou qui prévoit un processus par lequel un cimetière inactif peut être déplacé.

Entrée en vigueur

4. La présente loi entre en vigueur le jour que le lieutenant-gouverneur fixe par proclamation.

Titre abrégé

5. Le titre abrégé de la présente loi est *Loi de 2009 sur la protection des cimetières inactifs*.

Appendix C: Ontario's Unregistered Cemeteries List

Is a 71-page document, and can be found in its entirety on our website by following this link:

<https://ontariohistoricalsociety.ca/wp-content/uploads/2022/11/Unregistered-Cemeteries-List-Complete.pdf>